Bail Slip

The Appellant/Accused namely Paneer Selvam was directed to be released on bail by the order of this Court dt. 1.9.99 made in Cl.M.P.No. 7145/99 in C.A.No.642/99 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-7-2005

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR

AND

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.642 of 1999

Panneer Selvam .. Appellant/ Accused

vs

State represented by
The Inspector of Police
Malayampalayam Police Station
Erode District
(Crime No.313 of 1997) .. Respondent / Complainant

Criminal appeal filed under Sec.374 of the Code of Criminal Procedure against the judgment of the II Additional Sessions Judge, Erode, in S.C.No.62 of 1999 dated 28.7.1999.

For Appellant : Mr.B.Sriramulu
Senior Counsel
for M/s.N.A.Ravindran
and K.Annadurai

For Respondent : Mr.S.Jayakumar
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

The sole accused in a case of murder on being found guilty as the charge by the II Additional Sessions Court, Erode, in S.C.No.62 of 1999 and awarded life imprisonment, has brought forth this appeal.

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2. The short facts necessary for the disposal of this appeal are:

(a) P.W.1 is the wife of the deceased Natarajan. P.W.2 is the cousin brother of the deceased, living in a distance of 10 feet from the house of the deceased. The deceased was in need of Rs.5,000/-, which he asked from the accused. The accused in turn borrowed the said sum from P.W.6, who is the Proprietor of a Finance Company in Erode, on 26.6.1996 and gave the amount to the deceased. Many a demand was made by the accused for the return of the said sum; but, the deceased did not repay so. On the date of occurrence namely 26.12.1997, at about 12.00 Noon, the accused came to the house of the deceased, where P.Ws.1 and 2 were present. He made the demand of Rs.5,000/-; but, the deceased replied "no money". The accused told him that he was in dire need of money, and hence, the deceased could pay at least Rs.2,000/-. Again the deceased gave the same answer. Then, pursuant to a quarrel between the two, the accused pulled out a knife from his waist and stabbed Natarajan, the deceased in the case, on the right side of his stomach. P.Ws.1 and 2 witnessed the occurrence. The accused fled away from the place of occurrence.

(b) The injured was taken to the Government Hospital, Erode, who was attended by P.W.12 the Doctor, and in respect of the injuries caused, the prosecution marked the Accident Register copy as Ex.P14. An intimation was received by P.W.15 the Head Constable, attached to the Out-Post Police Station, who in turn informed to Malayampalayam Police Station. On receipt of the said message, P.W.18 the Head Constable, attached to Malayampalayam Police Station, went to the Government Hospital, Erode, and recorded the statement given by P.W.1, which is marked as Ex.P1, on the strength of which a case came to be registered in Crime No.313 of 1997 under Sec.326 of I.P.C. The printed First Information Report Ex.P23 was sent to the Court. In the meanwhile, the accused went to P.W.10 the Doctor, who was having a private clinic, and he had treatment for the injuries caused on his palm.

(c) On receipt of the copy of the F.I.R., P.W.18 the Head Constable, took up the case for investigation and went to the scene of occurrence. In the presence of witnesses, he made an inspection and prepared an observation mahazar Ex.P3 and a rough sketch Ex.P24. He also recovered from the place of occurrence bloodstained earth M.O.5, and sample earth M.O.6, under a cover of mahazar Ex.P4. Despite treatment, Natarajan died in the hospital on the same day at 8.30 P.M. An intimation Ex.P15, was sent to the concerned Police Station. P.W.16 a Grade-I Constable, attached to Out-Post Police Station, received the intimation and forwarded the same to Malayampalayam Police Station. On receipt of the death intimation, P.W.18 converted the case into one under Sec.302 of I.P.C. Express report Ex.P25, was sent to the Court.

(d) On receipt of the copy of the F.I.R., P.W.19 the Inspector of Police, took up the case for investigation. He proceeded to the hospital, conducted inquest on the dead body of Natarajan in the presence of panchayatdars and witnesses and prepared Ex.P26 the

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inquest report. He sent a requisition Ex.P11 to the hospital along with the dead body for conduct of postmortem.

(e) P.W.11 the Civil Assistant Surgeon, attached to the Government Head Quarters Hospital, Erode, on receipt of the requisition, conducted autopsy on the dead body of Natarajan and found the following injuries.

"1) A right paramedian incision with sutures about 8" from the epigastric region to umbilicus seen.

2) A drainage hole about 1" in length with drainage tube in the right sub costal margin about 6" from the incision."

The Doctor has issued Ex.P12 the postmortem certificate, with his opinion that the deceased would appear to have died of shock and haemorrhage due to visceral injury.

(f) Following the same, the place of occurrence was photographed through P.W.9 a Photographer, and the photographs and negatives were marked as Ex.P9 series and Ex.P10 series respectively. During investigation, P.W.19 the Investigating Officer, arrested the accused on 27.12.1997, at Solangapalayam Bus stop, when he gave a confessional statement. The admissible part is marked as Ex.P5. Pursuant to the confessional statement, both the knife M.O.1, and the T.V.S.50 M.O.9, in which the accused travelled, produced by him, were recovered under a cover of mahazar Ex.P7. On completion of the investigation, the final report was filed before the Court.

3. The case was committed to the Court of Session, and the necessary charge was framed.

4. In order to substantiate the charge levelled against the appellant/accused, the prosecution marched 20 witnesses and relied on 27 exhibits and 9 material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Sec.313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses, which he flatly denied as false. No defence witnesses were examined. The trial Court on hearing the arguments advanced and on scrutiny of the materials, found the appellant/accused guilty as per the charge and awarded the life imprisonment which is the subject matter of challenge before this Court.

5. The learned Senior Counsel appearing for the appellant inter alia made the following prime submissions:

(i) In the instant case, the prosecution relied on the evidence of P.Ws.1 and 2, who are highly interested. P.W.1 is the wife of the deceased, while P.W.2 is the cousin brother of the deceased, and thus, they have given the false versions against the accused. It is pertinent to note that the deceased owed money to the appellant/accused.

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(ii) The medical evidence is not in corroboration with the ocular testimony.

6. The learned Senior Counsel would further add that even assuming that the case put forth by the prosecution that it was the accused who stabbed the deceased, is proved, then the fact remains that it was a case where a quarrel ensued between the parties for a period of 15 minutes which is quite evident from the evidence of P.Ws.1 and 2, and it was also a single stab, and under the circumstances, the act of the accused could not be termed as murder, and hence, he is entitled to the benefit of exception 4 to Sec.300 of I.P.C., and it has got to be considered by this Court.

7. This Court heard the learned Additional Public Prosecutor on the above contentions.

8. It is not in dispute that the deceased Natarajan who was taken to the hospital with injuries, succumbed to those injuries. In order to substantiate the same, the prosecution has not only brought forth evidence through P.Ws.1 and 2, but also relied on the Doctor's evidence and the postmortem certificate Ex.P12 issued by him. It is also pertinent to point out that the accused never questioned the truth of this fact either before the lower Court or before this Court. Hence, it can be safely concluded that Natarajan died out of homicidal violence.

9. In order to establish the fact that it was the accused, who stabbed the deceased at the time of the occurrence, P.Ws.1 and 2 have been examined. True it is that P.W.1 is the wife, and P.W.2 is the cousin brother of the deceased. But, merely on the ground of relationship, the evidence of the witnesses cannot be rejected. Despite the careful scrutiny of the evidence of P.Ws.1 and 2, it remains unshaken, and the lower Court was perfectly correct in accepting their evidence. That apart, their evidence is fully corroborated by the medical evidence, and thus, the prosecution has brought forth sufficient evidence to hold that it was the accused, who stabbed the deceased at the time of the occurrence, and consequently he died.

10. So far as the act of the appellant/accused was concerned, the Court has to necessarily agree with the learned Senior Counsel for the appellant. In the instant case, even from the case of the prosecution, it could be seen that the deceased owed Rs.5,000/- to the appellant, and a demand was made; but, it was not repaid. The evidence would further go to show that at the time of the occurrence, the appellant came over to the house of the deceased, and when a demand for return of Rs.5,000/- was made, the same was not repaid, and though the appellant/accused asked the deceased to pay at least Rs.2,000/-, the deceased could not do so, and thus, there was a quarrel ensued between the parties for about 15 minutes preceding the occurrence, and following the same, the appellant/accused stabbed him in a sudden fight in the heat of passion upon a sudden quarrel. Under the circumstances, this Court is of the view that the appellant/accused is entitled to have the

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benefit of exception 4 to Sec.300 of I.P.C. In the instant case, it can be well stated that the act of the accused would not fall within the ambit of murder. But, at the same time, though it is not intentional or premeditated, he should have got the knowledge that his act would likely to cause the death of the other party. In such circumstances, this Court is of the considered opinion that the appellant/accused has got to be found guilty under Sec.304 (Part I) of I.P.C., and awarding the punishment of 7 years Rigorous Imprisonment would meet the ends of justice. Hence, the conviction of the appellant/accused under Sec.302 of I.P.C. and the consequent sentence imposed upon him are set aside, and instead, he is convicted under Sec.304 (Part I) of I.P.C. and is directed to undergo 7 years Rigorous Imprisonment.

11. In the result, with the above modification in conviction and sentence, this criminal appeal is dismissed. The sentence already undergone by the appellant/accused, shall be given set off. It is reported that the appellant is on bail. Hence, the Sessions Judge shall take steps to commit him to prison to undergo the remaining period of sentence imposed upon him.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1) The II Additional Sessions Judge, Erode.
2) The II Additional Sessions Judge, Erode,
   Through The Principal Sessions Judge, Erode.
3. The District Munsif - cum Judicial Magistrate,
   Kodumudi, Erode, Dt.,
4. Do- Thro The Chief Judicial Magistrate,
   Erode.
5) The District Collector, Erode District.
6) The Director General of Police, Chennai.
7) The Public Prosecutor, Madras.
8) The Superintendent, Central Prison, Coimbatore.
9) The Inspector of Police, Malayampalayam Police Station
   Erode District,

nsv/

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